

**Department of Lands**

*Land Administration & Management  
Property & Spatial Information*

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Standing Committee on Social Issues  
Legislative Council  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

Your Ref: -  
Our Ref: LM20090561:RG:Leg18:SV

27 November 2009

Dear Sir/Madam

**Re: Inquiry into substitute decision making for people lacking capacity.**

I refer to your letter of 11 November 2009 and enclose the transcript with one correction.

I also enclose my response to question taken on notice and questionnaire.

There is one additional piece of information I would like to offer. A Power of Attorney may allow an attorney to do all things that a principal may lawfully do, but so long as the principal has granted the power for the attorney to do this. For example, the LPMA registers many thousands of powers of attorney where the power is limited to a specific reason, usually for the attorney to only sell the principal's property or other real estate. These in built mechanism of allowing the principal to limit the power given to an attorney is effective and safeguards against potential fraud and abuse by an attorney.

Please do not hesitate to contact Mr Robert Goncalves, Senior Solicitor on 9228 6726; Fax: 9221 4309, if you have any further questions.

Yours faithfully

Warwick Watkins  
**Registrar General**  
Per:

Encl: As stated

**STANDING COMMITTEE ON SOCIAL ISSUES**  
**Inquiry into substitute decision-making for people lacking capacity**

**QUESTIONS ON NOTICE**  
**(Remaining from questions sent pre-hearing)**

**Mr Robert Goncalves**  
**Land and Property Management Authority**

6. Under the *Guardianship Act* a person can appoint an enduring guardian to act as their substitute decision-maker when they are in need of a guardian. In addition, under the *Powers of Attorney Act* a person can appoint an enduring attorney, which gives the attorney substitute decision-making powers when they lack capacity.
- Can you explain the difference between these two appointments?
  - Can the two appointments work together? If so, how?

**ANSWERS**

An enduring guardian is someone you legally appoint to make personal or lifestyle decisions for you when you are not capable of doing this for yourself. An attorney appointed under an enduring power of attorney can act on behalf of another person, even if they lose mental capacity. An attorney can only act on financial matters for the principal, not lifestyle or personal.

The two appointments can work together, as they do not overlap in the functions they provide. An enduring guardian can only make lifestyle and personal decisions: an attorney can only handle financial matters. Depending on the circumstances, it may be preferable for some people to have people(s) act as a guardian and an attorney. This way, lifestyle decisions and financial decisions can be made on behalf of the principal at the same time.